Supreme Court, U.S.
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No. 98-47

In The

Supreme Court of the United States

October 1997 Term

WILLIAM DOYLE WOOD,

Petitioner,

vs.

THE CITY COUNCIL OF MANASSAS, VIRGINIA; BOARD OF SUPERVISORS OF PRINCE WILLIAM COUNTY and THE MANASSAS REGIONAL AIRPORT ADMINISTRATION BOARD,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Virginia

BRIEF IN OPPOSITION FOR RESPONDENT BOARD OF SUPERVISORS OF PRINCE WILLIAM COUNTY

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QUESTIONS PRESENTED

1. Should this Court exercise its discretion to grant a Writ of Certiorari when the decisions of the Virginia courts rest on adequate nonfederal grounds and Wood presents no argument that the decisions of the Virginia courts conflict with the decisions of this Court, another state court of last resort or a United States court of appeals?

2. Should this Court exercise its discretion to grant a Writ of Certiorari concerning Wood's claim against Prince William County when his claim was dismissed consistent with the precedents of this Court?

3. Should this Court exercise its discretion to grant a Writ of Certiorari when the allegations of Wood's Complaint constituted merely preliminary activities that did not amount to a taking of the property?

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BASIS OF JURISDICTION

This Court does not have jurisdiction pursuant to Section 28 U.S.C. § 1257 because Wood's failure to present a claim to the Board was a jurisdictional matter that he has steadfastly refused to comply with, thereby denying the courts jurisdiction of his claim pursuant to state law.[1]

STATEMENT OF THE CASE

William Doyle Wood ("Wood") filed his Motion for Judgment, Petition in Inverse Condemnation and for Declaratory Judgment ("Motion for Judgment") on approximately June 19, 1997. The Motion for Judgment asserted a monetary claim against the County. On July 17, 1997 the County mailed a copy of its Demurrer and Plea in Bar ("Demurrer") to Wood. The Demurrer asked the court to dismiss Wood's suit because of Wood's failure to follow the requisite statutory jurisdictional procedures for bringing a monetary claim against the Board of County Supervisors of Prince William County ("County").

Section 15.1-554 VA Code Ann. provides that no action shall be maintained by any person against a county upon any claim or demand until such person shall have first presented his claim to the board of supervisors of such county. Moreover, Virginia case law provides that the claims procedure is a jurisdictional prerequisite to bringing any monetary claim against the County in court.[2]

Instead of complying with those jurisdictional procedures, Wood brought his case directly to the circuit court which

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1. VA Code Ann. Section 15.1-554.

2. *County of Chesterfield v. Town & Country Apartments & Townhouses*, 214 Va. 587, 203 S.E. 2d 117 (1974).

properly dismissed his Motion for Judgment because the court lacked jurisdiction to hear the matter pursuant to well established Virginia law. The Supreme Court of Virginia found no error in the circuit court's interpretation of the Virginia statutory and case law on that issue.

Contrary to Wood's Statement of the Case, Wood did not allege takings by conspiracy and physical invasion of his property. Wood's Motion for Judgment contained three counts; specifically inverse condemnation, nuisance and trespass. The Motion for Judgment did not contain counts for conspiracy and physical invasion. On appeal to the Supreme Court of Virginia, Wood again asserted that his claim was only in the three counts of nuisance, trespass and taking by inverse condemnation.

The Court also should note that the "low level overflights of [Wood's] abutting property" referenced in Wood's Statement of the Case were not alleged in his Motion for Judgment. Consequently, the circuit court had no such allegations before it when rendering its decision.

The circuit court dismissed the case against the City of Manassas ("City") and the Manassas Regional Airport Administration Board ("Airport Board") because the Motion for Judgment only alleged preliminary activities by the City and Airport Board that did not constitute a cause of action upon which relief could be granted The circuit court made no findings of fact, and considered only those allegations set forth in the documents before the court.

Although this matter was correctly dismissed as it pertains to the County because of Wood's refusal to comply with Virginia's established procedures for seeking compensation from counties, the Court also should note that the County's Demurrer

asked that Wood's Motion for Judgment be dismissed on several other grounds. The circuit court did not rule expressly on those arguments, presumably because of Wood's failure to take the steps necessary to provide the court with jurisdiction. Nonetheless, even if the circuit court had not granted the County's jurisdictional demurrer, the record clearly indicates that Wood's suit would have been dismissed as it pertained to the County for the same reason that the matter was dismissed as it concerned the City. Additional factors set forth in the County's Demurrer also would have required the circuit court to dismiss this frivolous suit. Specifically, the County does not own or control the airport which is the center of this suit[3], Wood lacks standing[4], the County has sovereign immunity, and Wood's suit is so vague that it is impossible to comprehend what County actions allegedly harmed him.

The Supreme Court of Virginia determined that there was no reversible error by the circuit court after reviewing the record of the case and considering all arguments concerning the appeal petition.

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3. As acknowledged in Wood's Motion for Judgment, the City owns and operates the airport. Further, the undisputed affidavit of the Mayor of the City of Manassas, which was admitted into evidence by the circuit court, provides that the County does not own or operate the airport. Rather, through its ownership of the Airport and its appointment of Airport Board members, the City controls the operations of the airport. The Airport Board was created by the City of Manassas as an advisory body, and the members of the Airport Board are appointed by the City.

4. The property formerly owned by Wood now belongs to another private property owner, just as it did when Wood filed this suit.

REASONS FOR DENYING THE WRIT

I.

WOOD'S CLAIM AGAINST THE COUNTY WAS DISMISSED ON INDEPENDENT AND ADEQUATE STATE GROUNDS.

As set forth in Appendix A- 2 of Wood's Petition, the circuit court dismissed Wood's suit against the County for his failure to comply with the jurisdictional requirements of VA Code Ann. Sections 15.1-550 through 554.[5] This independent and adequate state law ground for dismissing Wood's suit against the County should prevent this Court from disturbing the judgment of the circuit court. *Berea College v. Kentucky*, 211 U.S. 45, 53 (1908).

II.

WOOD'S PETITION FAILS TO ESTABLISH A BASIS FOR THE EXERCISE OF THIS COURT'S DISCRETIONARY JURISDICTION PURSUANT TO RULE 10.

Rule 10 provides that the Court may exercise its discretion to grant a petition for writ of certiorari if a state court of last resort has decided an important federal question in a way that conflicts with another state court of last resort or of a United States court of appeals. Importantly, Wood cites no authority that challenges, or conflicts with, the authority of Virginia courts to dismiss matters when a party refuses to follow jurisdictional requirements. However, Wood appears to contend that the state

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5. Effective October 1, 1997, Sections 15.-550 through 554 were recodified without substantive change as VA Code Ann. Sections 15.2-1245 through 1248.

court decisions in this case are in conflict with this Court's decision in *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304 (1987). His assertion is without merit.

In *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 312, n.6 and 313 (1987), the Court did not decide the issue of whether any alleged actions would deny the property owner all use of its property. Instead, the Court accepted the state court assumption that a taking had occurred and focused on the issue of whether compensation was required for a temporary taking.

Moreover, contrary to the assertions of Wood, neither *Danforth v. United States*, 308 U.S. 271 (1939) nor *Agins v. Tiburon*, 447 U.S. 255 (1980) were eroded or overruled by *First Lutheran*. Instead, while discussing *Danforth* and *Agins*, the Court confirmed that the preliminary activities in each case did not work a taking even though such activities may have depreciated the value of property. *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 320 (1987).

In *Danforth v. United States*, 308 U.S. 271 (1939), the Court found that legislation authorizing the Secretary of War to initiate condemnation actions was a preliminary act. The Court found it inappropriate to sanction a taking based on preliminary activities because until an actual taking occurs, the condemnor can discontinue or abandon his efforts. *Id.* at 284. For example, the Court also noted that legislation may be modified, or appropriations may fail. *Id.* at 286. Moreover, the Court held that a reduction or increase in the value of the property by reason of legislation for, or the beginning or completion of, a project are incidentals of ownership. *Id.* at 285. Wood has alleged only similar preliminary activities in his Motion for Judgment and the Virginia courts properly found that such preliminary activities do not constitute a taking.

In *Agins v. Tiburon*, 447 U.S. 255 (1980), the Court confirmed a state court decision sustaining a locality's demurrer to a taking claim based upon preliminary activities of the locality. The Court reaffirmed *Danforth* and rejected the property owner's contention that a municipality's good faith planning activities, which do not result in successful prosecution of an eminent domain claim, do not burden property so as to constitute a taking. *Id.* 263, n.9. In the pending matter, Wood has merely alleged preliminary activities undertaken by the City as it studied various possibilities for the future of the airport. As correctly determined by the Virginia courts, these preliminary activities do not constitute a taking. As acknowledged by the Court in *Danforth* and *Agins*, governmental bodies may choose not to proceed with condemnations and do not have to compensate landowners just because the government may have contemplated taking such property.

Finally, this Court's rulings in *Danforth* and *Agins*, concerning preliminary activities, was not eviscerated by its ruling in *Lucas v. So. Carolina Coastal Council*, 505 U.S. 1003 (1992). The offending statute in *Lucas*, on its face, clearly prohibited virtually all use of the subject property. In contrast, the actions alleged by Wood are of a preliminary nature that manifest the City's careful review of its options.

III.

WOOD'S TAKING CLAIM IS PREMATURE BECAUSE HE HAS NOT USED AVAILABLE STATE INVERSE CONDEMNATION PROCEDURES NOR SOUGHT A FINAL DECISION CONCERNING THE APPLICABILITY OF LOCAL ORDINANCES AS REQUIRED BY *WILLIAMSON REGIONAL PLANNING COMM'N v. HAMILTON BANK.*

A. Wood Did Not Use Available Inverse Condemnation Procedures.

Any taking claim is premature until the claimant shows that the applicable inverse condemnation procedure is unavailable or inadequate, and until the claimant has utilized that procedure. *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 197 (1985). Virginia's inverse condemnation procedures were available to Wood as set forth in VA Code Ann. Section 8.01-187. A jurisdictional prerequisite to those procedures is contained in VA Code Ann. Sections 15.-550 through 554. These statutes on their face, and as further confirmed by Virginia case law[6], require all claimants to formally present their monetary claims to the governing body of a county before granting the courts jurisdiction over such claims. Wood chose not to comply with that jurisdictional requirement, even after the County's Demurrer highlighted the requirement that he ignored when filing his suit against the County.

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6. *Nuckols v. Moore*, 234 Va. 478, 481-82, 362 S.E. 2d 715, 717 (1987) ("the language and context of [Sections 15.1-550 through 554] as well as their arrangement and sequence demonstrates a legislative intent to provide a comprehensive procedure for the presentation, auditing, challenge, defense, and judicial review of *monetary* claims asserted against a county."); and *County of Chesterfield v. Town & Country Apartments & Townhouses*, 214 Va. 587 at 590-591, 203 S.E. 2d 117 at 120 (1974).

Wood refused to use the established procedures available to assert his claim against the County. That refusal does not open the door to the federal courts, and Wood cannot create a federal claim by ignoring the available state process. Wood did not use the available inverse condemnation procedures and, consequently, his taking claim against the County is premature.

B. Virginia's Inverse Condemnation Procedures Were Adequate And Available To Wood.

Assuming *arguendo* that Wood actually used the available inverse condemnation procedures, his claim would still be premature because of an inability to show that Virginia's inverse condemnation procedures are inadequate.[7] Whether or not a state inverse condemnation remedy is "adequate" under *Williamson* is not determined by whether the landowner ultimately prevails or even by whether the state court judgment is sound. All that is required is that the party be afforded the opportunity for a full and fair hearing in state court. *Allen v. McCurry*, 449 U.S. 90, 101 (1980). The procedures under Sections 15.1-550 *et seq.* and 8.01-187 afforded Wood the opportunity for a full and fair hearing in state court, but he elected not to follow those procedures. His refusal to follow those procedures does not show that those procedures are inadequate.

C. Wood Did Not Obtain A Final Decision On The Applicability Of Ordinances To His Property.

Until a property owner obtains a final decision regarding the application of contested ordinances to his property, its claim is not ripe. *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186 (1985). Wood nakedly

7. VA Code Ann. Section 8.01-187 has been held to constitute the available state remedy for regulatory inverse condemnation claims. *Northern Va. Law Sch. v. City of Alexandria*, 680 F. Supp. 222 (E.D. Va. 1988).

alleges that he had plans for a mixed-use planned unit development. However, Wood has not alleged that he was denied permission to undertake such uses. In his Motion for Judgment, Wood cryptically stated that the County "incorporated certain derived information into the County's policies and land use, building and zoning of the County". Wood's pleadings are not clear, but if he is alleging that some of these specific land use and zoning policies of the County are restricting the use of his property then it is incumbent upon him, or his successor, to seek a final decision regarding the application of such regulations to his use of his property. Having failed to seek such a decision, a claim by him or his successor is not ripe.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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